

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7241 of 1989

WITH

SPECIAL CIVIL APPLICATION No 448 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

AJITSINH THAKORSINH

Versus

STATE OF GUJARAT

Appearance:

MR AJ PATEL for Petitioners

Mr K.C.SHAH, AGP, for Respondents.

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 04/07/96

ORAL JUDGEMENT

In these petitions under Article 227 of the Constitution of India, common questions are involved and, therefore, upon joint request the matters are being disposed of by this common judgment.

2. Special Civil Application No.7241 of 1989 (first petition hereinafter) has arisen out of the last order

dated 12.6.89 recorded by the Urban Land Tribunal and Ex-officio Secretary to Government, Revenue Department, Ahmedabad, in appeal No.Ahmedabad 202/86 whereby the appeal came to be dismissed preferred by the petitioners against the order recorded by the Competent Authority and Deputy Collector, ULC, Ahmedabad wherein he had held that the lease deed in respect of a portion of the land bearing survey No.355 admeasuring 1015 sq. yds. stood in the name of two members of the family, like that the petitioner and his son and that the petitioners would not be entitled to hold two units.

3. Special Civil Application No.448 of 1991 (second petition hereinafter) has arisen out of the ultimate order dated 27.7.1990 recorded by the Urban Land Tribunal, Ahmedabad in Appeal No.Ahmedabad-48/88 whereby the Urban Land Tribunal dismissed the appeal preferred by the petitioner.

4. In the first petition, the Competent Authority found that there is excess land held by the petitioner Ajitsing Thakorsing out of survey No.355 and declared 518 sq. mtrs. of land as surplus land which came to be confirmed in appeal under section 33 of the Urban Land (Ceiling & Regulation) Act, 1976 (ULC Act) by the Urban Land Tribunal. Hence the petition.

5. In the second petition, the Competent Authority found that the petitioner is holding excess land to the extent of 2035 sq. mtrs. out of 3035 sq. mtrs of land bearing survey No.355 situated at Rakhial, Ahmedabad. The order of the Competent Authority came to be confirmed as appeal thereagainst came to be rejected by the Tribunal on 27th July, 1990. Hence the petition.

6. After having examined the original record and hearing the learned counsel for the petitioners and the learned Assistant Government Pleader, Mr. Shah and considering the peculiar facts and circumstances, this Court is of the opinion that both the matters are required to be remanded to the Competent Authority for fresh inquiry into all the aspects. The learned counsel for the petitioners and the learned Assistant Government Pleader had taken this Court through the entire record which was brought by the officer concerned during the course of hearing. The learned counsel for the petitioner submitted that both the matters are required to be remanded as many aspects are not considered, opportunity of hearing is not properly given to the petitioners and there appears to be non-application of mind also to the vital questions. The contention to

remand the matters for fresh inquiry in accordance with law is not objected and in the opinion of this Court, having regard to the facts and circumstances emerging from the record of the case, the aforesaid submission is required to be accepted in the larger interest of justice.

7. In the result, the impugned orders are quashed and set aside and both the matters are remanded to the respondent Competent Authority for fresh inquiry and consideration after affording opportunity of hearing to the parties. In the facts of the case, the respondent Competent Authority is directed to decide both the matters simultaneously in accordance with law. Having regard to the facts and circumstances of the case, parties are directed to maintain status quo with regard to possession in respect of the disputed properties. The petitions are partly allowed. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.
